

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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VIA FACSIMILE AND FIRST CLASS MAIL

Gerald J. Kovach
NeuStar, Inc.
2000 M Street NW
Suite 600
Washington, DC 20036

Re: North American Numbering Plan Administrator Neutrality Requirements
CC Docket No. 92-237

Dear Mr. Kovach:

In this letter, the Wireline Competition Bureau (Bureau) responds to NeuStar Inc.'s (NeuStar) November 17, 2006 letter requesting approval by the Federal Communications Commission to enter into certain debt transactions.¹ After review of the information submitted by NeuStar, we have determined that the proposed debt transactions as described would be consistent with the requirements set forth in the *Warburg Transfer Order* and *Safe Harbor Order* if they were conditioned, as discussed below.² As such, this letter constitutes the prior approval required by the *Safe Harbor Order*.³

NeuStar's Letter requests approval to issue up to an aggregate of one billion dollars of debt through credit facilities, by public/private debt offerings, or by a combination of such transactions. Under section 52.12(a)(1)(ii) of the Commission's rules, NeuStar may not issue a majority of its debt to any telecommunications service provider (TSP).⁴ In addition, in the *Safe Harbor Order*, the Commission requires NeuStar to seek prior approval before issuing any debt to a TSP or TSP affiliate.⁵ In

¹ Letter from Gerald J. Kovach, Senior Vice President, External Affairs, NeuStar, Inc., to Thomas Navin, Chief, Wireline Competition Bureau, Federal Communications Commission (submitted November 17, 2006) (Letter).

² *Request of Lockheed Martin Corporation and Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Communications Industry Services Business*, CC Docket No. 92-237, Order, 14 FCC Rcd 19792 (1999) (*Warburg Transfer Order*); *Request of NeuStar, Inc. to Allow Certain Transactions Without Prior Commission Approval and to Transfer Ownership*, CC Docket No. 92-237, Order, 19 FCC Rcd 16982 (2004) (*Safe Harbor Order*).

³ *Id.* at 16992, para. 26.

⁴ 47 C.F.R. § 52.12(a)(1)(ii).

⁵ *Safe Harbor Order*, 19 FCC Rcd at 16992, para. 26. Under section 52.12(a)(1)(i) of the Commission's rules, an "affiliate" is defined as:

describing the various types of debt transactions, NeuStar states that its transactions may result in TSPs or TSP affiliates acquiring some of its debt. NeuStar claims, however, that identifying the TSP affiliations of every lender or debtholder in its proposed debt transactions would unnecessarily impede its access to debt financing for the efficient operation of the company because many lenders do not have such information readily compiled. As a result, NeuStar requests approval to enter into certain types of debt transactions with appropriate safeguards, which are outlined below, to ensure neutrality as described in the Letter. NeuStar claims that the terms of the debt issued and U.S. banking regulations will ensure that the debt transactions will not affect its neutrality or violate section 52.12(a)(1)(ii) of the Commission's rules.

As described in the Letter, NeuStar anticipates entering into, and seeks approval for, three types of debt transactions: (1) debt issuance to any U.S. insured depository institution or to a U.S. branch of a foreign bank that is subject to U.S. banking regulations (each, a Regulated Financial Institution), such as a revolving line of credit; (2) debt issuance to a wide group of investors in the public at large or to a group of large sophisticated investors, such as a bond offering; and (3) assumption of debt of a company that NeuStar is acquiring.

NeuStar proposes to place terms on all three types of debt issuances to secure its neutrality. The proposed terms would not allow lenders or debtholders to: (1) elect directors or vote on any other matters submitted to NeuStar's stockholders; (2) direct, or be involved in, the day-to-day operations of NeuStar; (3) effect policy changes at NeuStar; or (4) replace, oversee or direct the management of NeuStar.

In addition to these structural protections, in transactions involving debt issuance to Regulated Financial Institutions, NeuStar maintains that U.S. banking regulations will prevent Regulated Financial Institutions from exerting any influence that could compromise NeuStar's neutrality. Specifically, NeuStar cites the anti-tying restrictions of the Bank Holding Company Act as one example of how the U.S. banking regulations prevent Regulated Financial Institutions from using the extension of credit to benefit any TSP that may be affiliated with such Regulated Financial Institutions.⁶ In addition, NeuStar states that Regulated Financial Institutions and their subsidiaries are generally

a person who controls, is controlled by, or is under the direct or indirect common control with another person. A person shall be deemed to control another if such person possesses, directly or indirectly –

- (A) An equity interest by stock, partnership (general or limited) interest, joint venture participation, or member interest in the other person ten (10%) percent or more of the total outstanding equity interests in the other person, or
- (B) The power to vote ten (10%) percent or more of the securities (by stock, partnership (general or limited) interest, joint venture participation, or member interest) having ordinary voting power for the election of directors, general partner, or management of such other person, or
- (C) The power to direct or cause the direction of the management and policies of such other person, whether through the ownership of or right to vote voting rights attributable to the stock, partnership (general or limited) interest, joint venture participation, or member interest of such other person, by contract (including but not limited to stockholder agreement, partnership (general or limited) agreement, joint venture agreement, or operating agreement), or otherwise.

⁶ Letter at 2 citing 12 U.S.C. §§ 1971-1978.

prohibited from owning shares of a commercial enterprise such as a TSP.⁷ Any acquisition by a Regulated Financial Institution of the shares or assets of the TSP or TSP affiliate through foreclosure must be generally divested under U.S. banking laws within two years.⁸

In addition, NeuStar will restrict any entity that may be a TSP or TSP affiliate (other than a Regulated Financial Institution) from owning greater than 25 percent of any single debt issuance. Should NeuStar find that an entity that may be a TSP or TSP affiliate (other than a Regulated Financial Institution) owns greater than 25 percent of an issuance, the terms of the issuance will give NeuStar the right to comply with the 25 percent restriction either by the entity divesting the debt or NeuStar repurchasing the debt. To monitor for possible TSP affiliation, NeuStar states that it will engage an external service to survey its debtholders quarterly to attempt to identify any debtholder with greater than 25 percent of a given debt issuance.

Finally, NeuStar claims that when acquiring companies, it may need to assume the indebtedness of the acquired company. NeuStar states that it does not propose to assume any indebtedness of an acquisition target if it would violate section 52.12(a)(1)(ii) of the Commission's rules. However, should any debt assumed by acquiring a company violate the safeguards that NeuStar provides in its Letter, NeuStar commits to bring such debt into compliance with the 25 percent restriction described above. NeuStar requests a 90-day period post-acquisition to bring the acquired entity into compliance. NeuStar states that it will inform the Commission should any such issue arise. Furthermore, NeuStar emphasizes that the request involving acquired companies concerns debt only and does not constitute a request for approval to acquire an equity interest in a TSP or TSP affiliate.

Based on NeuStar's representation of the transactions, we approve the proposed debt transactions with the following clarifications. Specifically, we approve NeuStar's request to issue up to an aggregate of one billion dollars of debt through three types of debt transactions: (1) debt issuance to any Regulated Financial Institution; (2) debt issuance to a wide group of investors in the public at large or to a group of large sophisticated investors, such as a bond offering; and (3) assumption of debt of a company that NeuStar is acquiring. We acknowledge that the exact nature and affiliations of the lenders and debtholders are not known at this time, and we caution NeuStar that our approval is limited to the description and commitments made in the Letter. Nevertheless, we believe that it is reasonable to approve the proposed debt transactions given the Commission's rules and NeuStar's ongoing neutrality obligations, and in light of the proposed terms of the debt issuance and existing U.S. banking obligations.

First, NeuStar assures the Commission that at no time will the proposed debt transaction implicate section 52.12(a)(1)(ii) of the Commission's rules restricting a majority issuance of NeuStar's debt to any TSP. Second, NeuStar's neutrality continues to be governed by the conditions previously imposed on NeuStar and our prior approval

⁷ Letter at 3 citing 12 U.S.C. § 24 (Seventh).

⁸ Letter at 3 citing 12 U.S.C. § 1843 (c) (2) and (3).

requirements.⁹ Third, we are comfortable that the limiting terms on all types of debt issuances that NeuStar proposes in its Letter will further ensure neutrality and minimize the risks of undue influence by debtholders.¹⁰ In addition to restricting the actions of the debtholders, NeuStar will not issue close to a majority of its debt to a TSP because NeuStar will monitor its debtholders through periodic surveys to attempt to identify any beneficial holder of greater than 25 percent of a given debt issuance and whether that holder is a TSP or TSP affiliate. If such an entity were discovered (other than a Regulated Financial Institution), in order to monitor NeuStar's compliance with section 52.12(a)(1)(ii) as well as to assist our review of NeuStar's neutrality under section 52.12(a)(1)(iii), we require NeuStar to notify the Commission of the discovery and indicate how it is correcting the situation. We also require NeuStar to attempt to identify, through its surveys, any 10 percent or greater debtholders and to notify the Commission of those findings quarterly. In addition, we require NeuStar to file with us a legal opinion letter confirming its representations regarding the restrictions on Regulated Financial Institutions.¹¹ If NeuStar should find after entering a transaction that it potentially violates the terms to which it has committed in the Letter, we direct NeuStar to notify the Commission immediately and proceed to correct the violation. Fourth, as noted above, U.S. banking regulations would prevent further concerns about neutrality. Finally, we caution that should the Commission find that NeuStar has failed to abide by the terms to which it commits in its Letter, the Commission may seek any and all remedies available, up to and including termination.

The Bureau values the important role that NeuStar has played in numbering administration. We trust that NeuStar will take every measure to ensure that it, as the administrator of an important public resource, maintains its ability to serve in a neutral manner. If you have any questions concerning this letter, please communicate with my office at (202) 418-1500.

Sincerely,

Thomas J. Navin
Chief, Wireline Competition Bureau

⁹ See *Safe Harbor Order*, 19 FCC Rcd at 16984, para. 5 (citing 47 C.F.R. § 52.12; *Warburg Transfer Order*, 14 FCC Rcd at 19792, 19816; and Letter from Dorothy T. Attwood, Chief Common Carrier Bureau, to Ed Freitag, Esq., NeuStar, Inc., CC Docket No. 92-237, 17 FCC Rcd 13641 (Common Carrier Bureau July 12, 2002)).

¹⁰ Letter at 3. The limiting terms would not allow debtholders to: (1) elect directors or vote on any other matters submitted to NeuStar's stockholders; (2) direct, or be involved in, the day-to-day operations of NeuStar; (3) effect policy changes at NeuStar; or (4) replace, oversee or direct the management of NeuStar.

¹¹ See Letter from Christopher J. Bellini, Gibson, Dunn & Crutcher LLP, counsel for NeuStar, Inc., to Thomas Navin, Chief, Wireline Competition Bureau, Federal Communications Commission (dated December 22, 2006) (summarizing relevant banking laws and regulations and concluding that "a debt transaction between NeuStar and a Regulated Financial Institution will not result in NeuStar becoming aligned with a TSP in a manner that could compromise NeuStar's neutrality within the telecommunications industry").